

JUNE 16 2021

21-5036 ORIGINAL  
CASE NUMBER ,.....

IN THE SUPREME COURT OF THE UNITED STATES

ON A PETITION FOR A WRIT OF CERTIORARI

( To Enforce a Stay and injunction on 2131 n Frannea Tucson Az 85712 , to stop forcloser ,

And preserve my 7<sup>th</sup> 14<sup>th</sup> federal Rights , Because there is no loan on Said property

See key exhibits A , 1 , 2 )

THE NAMES OF COURTS THAT LAST RULED ON MERITS OF MY CASE

was ARIZONA SUPREME COURT CV -21- 0056 PR

CV -20- 0247 pr

From ARIZONA COURT OF APPEALS Division 2

CASE No. 2 CA CV 2019 0211

, From Superior Court Tucson Cause no. C 2019 5500

Written by **PLAINTIFF, MARK W MCCUNE** Petitioner PRO PER to US SUPREME COURT

2131 N FRANNEA Tucson, Arizona 85712 , USA Telephone — (520) 358 0386

EMAIL tucson99az@yahoo.com June 10 2021

*Mark McCune*  
JUNE 16 2021

List of Defendant Partys and there attorney

**PHH MORTGAGE**

NOVA HOME LOANS , WESTERN PROGRESSIVE

**DEFENDENTS attorney is , Solomon S. Krotzer**

Attorney for Defendants and PHH Mortgage

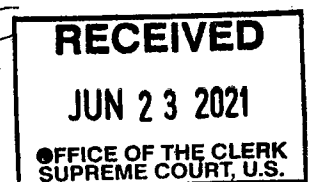
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COURT OF THE UNITED STATES.  
WASHINGTON DC  
20543



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### OPINIONS BELOW IN THE SUPREME COURT OF THE UNITED STATES

#### PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

#### OPINIONS BELOW

( X ] For cases from state courts:

The opinion of the highest state court to review the merits appears at,

Filing was to ARIZONA SUPREME COURT CV -21- 0056- PR March 3rd 2021 Denied Stay Appendix E  
Order of State Supreme Court Denying Stay, & Rehearing

Appendix to the petition and is The Arizona Supreme Court

[ ] reported at ; or,

[ ] has been designated for publication but is not yet reported; or,

[ X ] is unpublished.

The opinion of the Arizona Court of Appeals Division 2

appears at Appendix to the petition and is

ARIZONA COURT OF APPEALS Division 2 Case No. 2 CA CV 2019 0211

Feb 5th 2021 and Feb 12th 2021 memorandum Denied Stay and Injunction

Appendix A , Decision of State Court of Appeals

[ ] reported at ; or,

[ X ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

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**JURISDICTION.** Rule 30 (Computation and of time) during Covid is 150 days ,

Az Supreme court denial is from March 3rd 2021 to writ June 18 2021 is 120 days

The date on which the highest state court decided my case was . March 3rd 2021

and A copy of that decision appears at Appendix . E

Second Filing was to ARIZONA SUPREME COURT CV -21- 0056- PR March 3rd 2021 Denied Stay  
Appendix E Order of State Supreme Court Denying Stay, & hearing

First Filing to ARIZONA SUPREME COURT CV20- 0247- PR.DEC 22 2020 Denied Stay

Appendix D Order of State Supreme Court Denying Stay, DEC 22 2020

Appendix C Decision of State Supreme Court Denying Petition Review Jan 8 2021

ARIZONA COURT OF APPEALS Division 2 Case No. 2 CA CV 2019 0211

Feb 5th 2021 Denied Stay and Injunction 1 page

and Feb 12th 2021 memorandum 5 page Denied amending the record of Appeal

Appendix A Decision of State Court of Appeals

Superior Court Tucson Cause no. C 2019 5500 Nov 7th 2019 Denied Stay & injunction , Appendix B  
Decision of State Trial Court

the Covid 19 time limit for filing a Writ of Certiorari WRIT OF CERTIORARI is 150 day

during this covid 19 crises , this is within the 150 day time limit ,

i MARK W MCCUNE am filing this Writ approx 7 days after Deny of Stay and injunction ,

by Az Supreme court March 3 2021 appendix

**JURISDICTION** The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a). page 3

.....  
**QUESTION(S) PRESENTED For Review to US Supreme Court**

**Did the Arizona courts make a correct decision denying a Stay and injunction when there is no loan on 2131 n Frannea , and denying my constitutional rights , 7th and 14th amendments and denying my constitutional rights of having a fair trial and separating myself from my property with out due legal process :**

**STATUTORY PROVISIONS INVOLVED**

**The basis for this petition is the 7th amendment of US citizion right to a fair trial by jury and the Federal 14th amendent of not seperating a person from his property with out due process of law , and Mark Mccune has shown letters to Both the Arizona Supreme Court and Feb 28th 2021 petition for review exhibit 2 and exhibit 11 , and the , Appeals court Division 2 in March 2 2020 opening brief ROA 29 exhibit 2 and exhibit 11 that there is no loan on 2131 n Frannea and it should not be foreclosed on ,**

**and there should be a Stay and injunction ,.. put in place ,**

**Exhibit 2 ROA 29 opening brief , 2018 letter Wells fargo has no loan or mortgage on 2131 n Frannea**

**Exhibit 11 ROA 29 opening brief , 2020 letter Nova homeloans has no interest in 2131 n Frannea , Proving that there is no loan or mortgage on 2131 n Frannea and therefore is grounds for appeal & petition Review , And therefore a Stay and injunction should be put on 2131 n Frannea until after a jury trial ,**

**After reading this petition the Court should come to the conclusion that there is no loan on 2131 n Frannea and this case should be remanded back to a trial court for a trial by jury ,**

.....  
...

**Main issue: There was a Arizona Supreme court PETITON FOR REVIEW OF OPINION by {¶11The trial court's denial of McCune's motion for a temporary restraining order is affirmed. } see attached Order, Memorandum Feb 12th 2021 5pg memorandum EXHIBIT B Appendix A ( Appendix A Decision / Memorandum of AZ State Court of Appeals Div 2 )**

**1 ) Did the Arizona Supreme court make the correct decision in not Granting and Denying my Emergency**

**motion for Stay and injunction march 3rd 2021 ,**

## TABLE OF CITATIONS

A ) JSG Trading Corp. v. Tray- Wrap, Inc., 917 F.2d 75, 79 (2d. Cir 1990);

Losing the Property is not speculative; rather, the harm is unquestionably imminent.

B ) Mobilisa, Inc. v. Doe, 217 Ariz.

103, 111-12, n. 9; 170 P.3d 712, 720-21 (App. 2007).

A plaintiff seeking a preliminary injunction must establish that: (1) He/she is likely to succeed on the

merits; (2) He/she is likely to suffer irreparable harm in the absence of preliminary relief; (3)

the balance of equities tips in his favor; and (4) an injunction is in the public interest

C ) Shoen v. Shoen, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990). To

meet this burden, the moving party may establish either (1) probable success on the merits and

The critical element in the court's analysis is the relative hardship to the parties

D ) Simula, Inc. v. Autoliv, Inc., 175 F.3d

716, 725 (9th Cir. 1999) (petitioner must show significant threat of irreparable harm). Because this case

involves real property, which is by its nature unique, Mr. Mccune cannot possibly be compensated by

mere money damages. Moreover, the relief he seeks is mandated by statute to prevent a trustee's sale  
page 3

.....  
.....

## ARIZONA STATUTES

A.R.S. 33-801(9) ("Trust property" means any legal, equitable,

leasehold or other interest in real property which is capable of being transferred."; emphasis added.);

A.R.S. 33-807 (sale of trust property); A.R.S. 33-808 (notice of trustee sale requirements etc.

ARS 33 804 beneficiary transfer

Plaintiff MARK W MCCUNE , pursuant to Rules b(d) and 65(d), Arizona Rules of Civil Procedure and

A.R.S. § 12-1801, et seq., requests that this Court issue a Temporary Restraining Order ("TRO")

preventing Defendants PHH MORTGAGE from foreclosing

Plaintiff will lose the Property without the opportunity to litigate the issues raised in his Verified  
AFFIDAVIT . If he

does not obtain injunctive relief before the scheduled Trustee's Sale, the Property will be sold, and he will lose all defenses to the Trustee's Sale, according to A.R.S. 33-811(c), if an injunction is not timely obtained by 5 p.m. on the business day before the scheduled sale.

## **FEDERAL CITATIONS**

a) U.S. Supreme Court DECISION

Carpenter v. Longan, 16 Wall. 271.83 US 271 274 .21 Led313 (1872)

THE US SUPREME COURT STATED , THE NOTE AND MORTGAGE ARE INSEPARABLE , THE FORMER AS ESSENTIAL THE LATTER AS A INCIDENT AN ASSIGNMENT OF THE NOTE CARRIES THE MORTGAGE WITH IT WHILE ASSIGNMENT OF THE LATTER ALONE IS A NULLITY

2) Kelley v. Upshaw 91952) 39 C.2d 179, 246 P.2d 23; Polhemus v. Trainer (1866) 30C 685).

## **FEDERAL LAWS 7th AMENDMENT bill of RIGHTS**

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

14th amendment    citizens should not be seperated from there property without due process of law

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## **XIII. Reasons for Granting the Writ**

I Mark McCune Do not agree with the Arizona Supreme court or appeals court Division 2 decisions,

Both Courts have seen new evidence that there is no loan on my property and evidence should not be waived facts are facts ,

and i was never given a chance for discovery , or due process of law in Az Courts

i have shown the Arizona Supreme court & Appeal Court Div 2 letters from Wells fargo and Nova home loans showing they have no interest or loan on my property see ROA 29 exhibits 2, 11 from my opening brief and Petition for Review and therefore this there is grounds

For granting Writ , so this case can be put back into a trial court to prove infront of a jury there is no beneficiary or lender for any loan on my property 2131 n frannea ,

Regarding Statements of issues presented for Review

page 6



### **Disposition**

¶11 The trial court's denial of McCune's motion for a temporary restraining order is affirmed.

I Mark McCune Do not agree with the Arizona Supreme court or appeals court Division 2 decision here

the Both Courts has seen new evidence that there is no loan on my property and evidence should not be waived facts are facts ,

and i was never given a chance for discovery , or due process of law

i have shown the Arizona Supreme court & Appeal Court letters from Wells fargo and Nova home loans showing they have no interest or loan on my property see ROA 29 exhibits 2, 11 from my opening brief and therefore this there is grounds

For granting Writ , so this case can be put back into a trial court to prove infront of a jury there is no beneficiary or lender for any loan on my property 2131 n frannea ,

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**Statement of Facts from (see ROA 29 Exhibits from opening brief March 2 2020 )**

**a copy of ROA 29 march 2 2020 opening brief Exhibits is attach to this petition for Review**

1 ) TUCSON POLICE Went to Nova Home loans Corporate center on Broadway and questioned 9 Nova employees Jan 3 2020 , For 2 hours And Mark showed a video to police with Nova admitting Nova has no interest in 2131 n Frannea property , **ROA 29 March 2 2020 Exhibit 1**

**2 ) THEN NOVA HOME LOAN Attorney Robert Garcia sent a letter to Mark Mccune 3 DAYS later Jan 6th 202**

**" Stating Nova has no interest on 2131 n Frannea and NOVA should not be forclosing on the 2131 N FRANNEA Property " ROA 29 March 2 2020 page 16 , Exhibit 2**

3) ) The April 1st 2016 ( 2ND Assignment of Deed of Trust ) is illegal from Nova To MERS

**ROA 29 March 2 2020 page 17 Exhibit 3**

page 8



( Because Nova Already Sold And Assigned all of Nova interest 13 YEARS PRIOR in the 1ST ASSIGNMENT OF DEED OF TRUST With a \$54k loan to GMAC MortgageBack in may 22nd 2003 ) " Nova cant resell or assign a loan it does not Own" **ROA 29 March 2 2020 page 19 Exhibit 4**

5 ) also it was illegal and a Felony For Nova To falsely claim that the 2131 n Frannea 2nd assign Deed of trust had a value of \$100,000

) THERE IS NO VALUE ASSIGNMENT ANY WHERE ON THE Real MAY 22 2003 1st DEED OF TRUST assignment NOVA MADE UP A ILLEGAL 100K 2ND ASSIGNMENT OF DEED OF TRUST ON APRIL 1ST 2016 , **ROA 29 March 2 2020 page 21 Exhibit 5**

7 ) The Oct 5th 2012 assignment of Deed of Trust is illegal from Mers to Wells fargo As indenture Trustee of GMACM 2004 HE1 Trust,

Because GMAC Filed Bankruptcy May14th 2012 and only a Bankruptcy Judge or Bankruptcy Trustee can assign a GMAC Bankruptcy Asset After May 14 2012 , The Oct 5th 2012 Deed of Trust assignment is invalid **ROA 29 March 2 2020 page 22 Exhibit 7**

8 ) OCWEN /PHH does not have a loan servicing contract with WELLS FARGO BANK OR NOVA HOMELOANS

OR ANY ONE ELSE TO SERVICE ANYLOAN ON 2131 N FRANNEA , needs for discovery

9 ) THE LAST LOAN SERVICER AND LOAN HOLDER OF RECORD WAS

GMAC MORTGAGE AND NO ONE ELSE AFTER 2006 AS PER MERS STATEMENT **ROA 29 March 2 2020 page 27 Exhibit 9**

10 ) western progressive and nova forecloser letters every month Exhibit 10

**ROA 29 March 2 2020 page 25 Exhibit 12**

11 ) . WELLS FARGO letters DATED MARCH 2018 saying Wells has no loan on

2131 n frannea , **ROA 29 March 2 2020 page 28 Exhibit 11**

12 ) NOVA LETTER JAN 6TH 2020 SAYING HAS NO INTEREST IN 2131 N FRANNEA **ROA 29 March 2 2020 page 16 Exhibit 2**

13 ) MARK MCCUNE INHERITED 2131 N FRANNEA WITH NO MORTGAGE AND NO PAYMENTS IN MARCH 2011

14 ) LOIS KNOTT PAST AWAY ( from heart attack ) JULY 6TH 2006

15 ) LOIS KNOTT MADE A 55K PAY OFF NOV 7TH 2003 MOB page 29 Exhibit 15

16 ) LOIS KNOTT TOOK OUT A \$54K HELOC LOAN ON 2131 N FRANNEA ON MAY 22 2003  
page 30 Exhibit 1 ROA 29 March 2 2020

17 ) the substitution of trustee was illegajy done by an Ocwen employee on april 1st 2016  
ROA 29 March 2 2020 exhibit 17

18 ) ocwen was fined \$2 . 1 billion in 2013 for illegally forclosing on 185,000 house

ROA 29 March 2 2020 exhibit 18

////////////////////////////////////

I Mark Mccune am a victim of deed fraud because of following

April 1st 2016 NOVA illegally recorded \$100,000 debt on Frannea without legal standing MOB page 17 Exhibit 3

( Nova already sold there interest of deed of trust to mers in may 22 2003  
) MOB page 19 Exhibit 4

April 1st 2016 OCWEN appointed Western Progressive substitution of Trustee without legal standing, page 23 24 Exhibit 17

( ocwen was not a lender or creditor ARS 33 804 could not appoint trustee )

April 25th 2016 Western Progressive started foreclosing on Frannea for \$100k without legal standing, Exhibit needs to be supplemented

( ocwen had no right to appoint western progresive )

i am being forclosed on because of a Fake illegal recording of a april 1st 2016 corporate assignment of deed of trust MOB page 17 Exhibit 3

for \$100,000 recorded April 1st 2016 by NOVA , and not because my mother had a \$54k heloc in 2003 in April 1st 2016 OCWEN loan servicing appointed Western Progressive substitution of Trustee was without legal standing because ocwen was not a beneficiary or trustee and there for had no right to appoint Western progressive as new trustee therefor the notice of sale April 25th 2016 was invalid as per az laws ARS 33 804

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## Reasons to Grant Review

**First issue: Mark McCune motion for Emergency stay** there needs to be a stay and injunction as per 8d so i do not lose my property the Appeals court Div 2 has Denied a stay or injunction , but it is a Emergency and a forecloser sale is set for March 25th 2021 11 am ,

see exhibit A

## FEDERAL LAWS 7th AMENDMENT bill of RIGHTS

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

14th amendment citizens should not be seperated from there property without due process of law

I Mark McCune Do not agree with the appeals decision

the Appeal court has seen new evidence that there is no loan on my property and evidence should not be waived facts are facts ,

and i was never given a chance for discovery , or due process of law

i have shown the Appeal court letters from Wells fargo and Nova home loans showing they have no interest or loan on my property see exhibits see exhibits 2, 11 of opening brief and therefore this is grounds for appeal to put this back into trial court to prove infront of a jury there is no beneficiary for any loan on my property 2131 n frannea ,

.....

## LEGAL ARGUMENT For RE : Motion To Stay and injunction as per Rule 23 and 8 d )

MARK MCCUNE IS MOTIONING THE ARIZONA SUPREME COURT ORDER STAY AND INJUNCTION AS PER RULE 8d

{ THERE ARE , NEW EVIDENCE AND NEW FACTS IN THE CASE

THAT NEED TO BE SUPPLEMENTED TO THE RECORD

AGAINST PHH MORTGAGE , THAT ARE CLAIMING THEY ARE THE LOAN SERVICER for a \$140K loan that does not exist

ON 2131 N FRANNEA,

IT IS THIS AND FOLLOWING REASONS THAT UNDER 7TH and 14th AMENDMENT I MARK MCCUNE

SHOULD BE ALLOWED A TRIAL BY JURY and not be seperated from my property prior to due process of law , A ) I MARK MCCUNE Will Lose the Property is not speculative; rather, the harm is unquestionably imminent. JSG Trading Corp. v. Tray- Wrap, Inc., 917 F.2d 75, 79 (2d. Cir 1990);

B ) I MARK MCCUNE A plaintiff seeking a preliminary injunction must establish that:

(1) He/she is likely to succeed on the merits;

(2) He/she is likely to suffer irreparable harm in the absence of preliminary relief;

(3) the balance of equities tips in his favor; and (4) an injunction is in the public interest Mobilisa, Inc. v. Doe, 217 Ariz.

103, 111-12, n. 9; 170 P.3d 712, 720-21 (App. 2007).

C ) I MARK MCCUNE meet this burden, the moving party may establish either

(1) probable success on the merits and

The critical element in the court's analysis is the relative hardship to the parties

Shoen v. Shoen, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990). To

D ) I MARK MCCUNE petitioner shows significant threat of irreparable harm). Because this case involves real property, which is by its nature unique, I Mr. Mccune cannot possibly be compensated by mere money damages. Moreover, the relief he seeks is mandated by statute to prevent a trustee's sale Simula, Inc. v. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999)

.....  
I MARK MCCUNE PLAINTIFF HAVE ARIZONA REVISED STATUTES ON MY SIDE

AS WELL TO HAVE A FAIR TRIAL AND HEARING

A.R.S. 33-801(9) ("Trust property" means any legal, equitable, leasehold or other interest in real property which is capable of being transferred."; emphasis added.);

A.R.S. 33-807 (sale of trust property); A.R.S. 33-808 (notice of trustee sale requirements etc.

Plaintiff MARK W MCCUNE , pursuant to Rules b(d) and 65(d), Arizona Rules of Civil Procedure and

A.R.S. § 12-1801, et seq., requests that this Court issue a Temporary Restraining Order ("TRO")

preventing Defendants PHH MORTGAGE from foreclosing

Plaintiff will lose the Property without the opportunity to litigate the issues raised in his Verified AFFIDAVIT . If he

does not obtain injunctive relief before the scheduled Trustee's Sale, the Property will be sold, and hewill lose all defenses to the Trustee's Sale, according to A.R.S. 33-811(c), if an injunction is not timely

obtained by 5 p.m. on the business day before the scheduled sale.

I MARK MCCUNE HAVE FEDERAL LAW ON MY SIDE AS PER FEDERAL CITATIONS

a) U.S. Supreme Court DECISION

Carpenter v. Longan, 16 Wall. 271.83 US 271 274 .21 Led313 (1872)

THE US SUPREME COURT STATED , THE NOTE AND MORTGAGE ARE INSEPARABLE , THE FORMER AS ESSENTIAL THE LATTER AS A INCIDENT AN ASSIGNMENT OF THE NOTE CARRIES THE MORTGAGE WITH IT WHILE ASSIGNMENT OF THE LATTER ALONE IS A NULLITY

2) Kelley v. Upshaw 91952) 39 C.2d 179, 246 P.2d 23; Polhemus v. Trainer (1866) 30C 685).

The 2003 May 22 2003 assignment of deed of trust from NOVA TO MERS

FOREVER SPLIT APART THE 2003 DEED OF TRUST AND WHAT WAS A 2003 \$54K HELOC LOAN

THE 2012 OCT 5TH ILLEGAL DEED OF TRUST ASSIGNMENT FROM MERS TO WELLS FARGO

FOREVER SPLIT APART THE 2003 DEED OF TRUST AND WHAT WAS A 2003 \$54K HELOC LOAN

AND NULLIFIED ANY LOAN THAT MAY HAVE EXISTED AS PER

Kelley v. Upshaw 91952) 39 C.2d 179, 246 P.2d 23; Polhemus v. Trainer (1866) 30C 685).

.....  
ALSO THE 2016 APRIL 1ST ILLEGAL 100K DEED OF TRUST ASSIGNMENT FROM NOVA TO MERS

Was done with out legal standing Nova already sold there rights to loan in May 22 2003 to MERS

ALSO FOR EVER SPLIT APART THE 2003 DEED OF TRUST AND WHAT WAS A 2003 \$54K HELOC LOAN

AND NULLIFIED THE LOAN AS PER Kelley v. Upshaw 91952) 39 C.2d 179, 246 P.2d 23; Polhemus v.

Trainer (1866) 30C 685).

## INCONCLUSION

**issue one** i hope the Arizona Supreme Court , will grant a Stay and injunction as per rule 23 and 8 d on 2131 n frannea house

so i will not lose my property as per 7th and 14th amendment and preserve my rights so i can have proper hearings, discovery, authentication as per rule of evidence 901 and a trial ,

I MARK MCCUNE Plaintiff Appellant am asking the u s court should not take PHH Mortgage documents at face value and Documents need to be authenticated

as per Federal rule of evidence 901

there still needs to be important points of material fact need to be answered

1 who is really owed money

2 who is the party that is really foreclosing on me its not Wells Fargo or Nova

3 who really owns the debt on 2131 n frannea

4 how much debt is really truly owed

NOVA HAD NO LEGAL RIGHT TO COME BACK in 2016 , 10 years after my mother passed away in 2006

and put this new illegal loan of \$100,000 on my house for the Sole purpose of Ocwen loan servicing Foreclosing on it,

by illegally appointing Western progressive as trustee , Ocwen loan servicing did not have the legal standing to appoint Western because Ocwen was not trustee or beneficiary or owner of any loan on 2131 n Frannea ,Further more Western progressive does not have the legal authority under arizona law to conduct a Forecloser sale

on 2131 n frannea because they were wrongfully appointed by Ocwen loan servicing on April 1st 2016 by a ocwen employee kimberley brown , **see ROA 29 Exhibit 17 page 23**

Ocwen was not a beneficiary or trustee and had no legal authority to appoint Western progressive as trustee

Respectfully submitted this day June 10 2021

possible for me to Supplement the record on Appeal , with new and existing facts and documents to complete my arguments and oral & Reply brief for Mark Mccune Case against PHH Mortgage,

Respectfully submitted this day June 10th 2021

by Mark Mccune proper Appellant ,

end of Writ

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Mark Mccune  
Mark Mccune